

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA

JUL 17 1991

JUDGEMENT ENTERED ON JUL 17 1991

In Re:

WILLIAM F. FOWLER and
BRENDA KAY FOWLER,

Debtors.

J. BARON GRISHON
Case No. 91-30360
Chapter 13 Deputy Clerk

ORDER SETTING FURTHER HEARING AND NOTICE THEREOF

This matter came before the court for hearing on July 9, 1991, on the Motion for Valuation filed by Commercial Credit Corporation (hereafter "Commercial").

In this Chapter 13 proceeding, the Chapter 13 Standing Trustee, Warren L. Tadlock, has valued Commercial's secured claim in the amount of \$500.00 and its unsecured claim in the amount of \$4,643.29. Commercial has objected to the value of its secured claim established by the Standing Trustee and has requested the court to determine the value of its secured claim. Commercial sold the debtors siding materials on credit and installed the siding materials on the debtors' residence.

THE PARTIES' CONTENTIONS

Commercial contends that its claim is secured by virtue of a properly filed U.C.C. Record Owner Fixture Filing Financing Statement and that the value of its secured claim should be the amount of the debt, \$5,143.29. The debtors, however, contend that under section 25-9-313(2) of the North Carolina General Statutes, Commercial does not have a secured claim in the siding materials because of their incorporation into an improvement on

land. The debtors alternatively contend that if Commercial has any security interest, the court should use the liquidation value for the siding materials to determine the value of Commercial's security interest.

DISCUSSION AND ANALYSIS

A properly filed proof of claim constitutes prima facie evidence of a valid claim and shifts the burden to an objecting party to produce evidence rebutting the validity of the claim against the debtor's estate. See In re Fidelity Holding Co., Ltd., 837 F.2d 696, 698 (5th Cir. 1988); In re Missionary Baptist Found. of Am., Inc., 712 F.2d 206, 212 (5th Cir. 1983). The ultimate burden of proof of the claim, however, always rests upon the claimant. Fidelity Holding, 837 F.2d at 698.

The debtors raise only legal arguments in contesting the validity of Commercial's claim, and both of the debtors' contentions must be rejected. First, the debtors erroneously rely upon section 25-9-313(2) of the North Carolina General Statutes in attempting to deny the existence of Commercial's secured status. Section 25-9-313(2) provides as follows:

A security interest under this article may be created in goods which are fixtures or may continue in goods which become fixtures, but no security interest exists under this article in ordinary building materials incorporated into an improvement on land.

N.C. Gen. Stat. § 25-3-919(2) (1986). The Amended Official Comment to section 25-9-313 explains subsection (2) as follows:

The assertion that no security interest exists in ordinary building materials is only

for the operation of the priority provisions of this section. It is without prejudice to any rights which the secured party may have against the debtor himself if he incorporated the goods into real estate

N.C. Gen. Stat. § 25-3-919, Amended Official Comment (emphasis added) (1986). The debtors, therefore, cannot use section 25-9-313(2) to deny the existence of Commercial's secured status. This case does not involve a priority dispute, but instead involves the rights of Commercial as against the debtors.

The debtors' second contention based on section 25-9-313(8) of the North Carolina General Statute is flawed and likewise without merit. Section 25-9-313(8) governs repossession of fixtures and has not bearing on valuation of claims in bankruptcy. See N.C. Gen. Stat. § 25-3-919(8) (1986). The debtors successfully cannot argue that Commercial's only security interest is in the siding materials once they are removed from the residence and, as corollary, that the value of Commercial's secured claim is only the liquidation value of the custom siding once it is removed from the house. The siding materials, however, evidently were cut and tailored for installation on the debtors' residence. If the debtors intend to reap the benefits of the improvements and increased value to their residence, they also should bear the burden of paying for the materials bringing about such improvements and increased value. Therefore, use of a liquidation valuation when the debtors intend to continue to use the property would be inappropriate.

Having rejected the debtors' two contentions, the court now

ordinarily would determine the value of Commercial's secured claim, if any, under section 506(a) of the Bankruptcy Code. The only evidence before the court shows that the siding materials increased the value of the debtors' residence by \$4,600.00. The court believes and finds that this is the best evidence of the value of Commercial's secured claim. This, however, is the maximum value of its secured claim. The debtors have encumbered their residence with a deed of trust, which has priority over Commercial's claim. The debtors may not have sufficient equity in their residence to secure the entire amount determined by the court to be the maximum value of Commercial's secured claim. To determine the actual amount of Commercial's secured claim, the court must consider additional evidence. The court, therefore, will set Commercial's Motion for Valuation for further hearing to allow the parties to present additional evidence of the fair market value of the debtors' residence, the extent to which the debtors' residence is encumbered, and the priority of all encumbrances on the debtors' residence. The court believes that this evidence is necessary in determining the value of Commercial's secured claim and shall defer ruling on Commercial's Motion for Valuation until after the further hearing.

NOW IT IS ORDERED THEREFORE that:

1. Commercial Credit Corporation's Motion for Valuation is set for further hearing at 9:30 a.m. on August 27, 1991, in the United States Bankruptcy Court in Charlotte, North Carolina; and
2. This Order shall serve as formal notice of the August

27, 1991 hearing on Commercial Credit Corporation's Motion for Valuation.

This the 15th day of July, 1991.

George R. Hodges
George R. Hodges
United States Bankruptcy Judge